IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No 279 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAKHANPAL NATIONAL LTD

Versus

INCOME TAX OFFICER,

Appearance:

1. TAX APPEAL No. 279 of 1999
MR JP SHAH for Petitioner No. 1
MR BB NAYAK for Respondent.

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 In this appeal, after hearing the learned Advocates, as suggested by the learned Advocate for the appellant, the following substantial question of law had been framed by this Court at the time of admission.

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the appellant was not entitled to Investment Allowance u/s.32A read with Section 43A(1) and Section 43 of the Income-tax Act,1961 in respect of the additional cost of Rs.1,14,165/= which it suffered in rupee term because of the fluctuations in the rates of Foreign Exchange ?"

2 We have heard Mr.J.P.Shah for the appellant and learned Standing Counsel Mr.B.B.Nayak for the respondent. The learned Advocates have submitted before this Court that in ITR No.178/85, the Full Bench of this High Court has already rendered its opinion on the question of law involved in this appeal.

3 In light of this undisputed legal position it is held that the assessee is entitled to investment allowance in respect of additional cost suffered by it due to exchange rate fluctuation. The orders of the Tribunal and the lower authorities are quashed and set aside in relation to the aforesaid question. The Assessing Officer shall pass appropriate order for giving effect to this judgment.

4 The appeal is allowed accordingly with no order as to costs.

Sd/- Sd/-

(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhatt